

DISTRICT COURT 125 North Spruce St. Grand Junction, Mesa County, Colorado	DATE FILED: November 10, 2017 11:23 AM CASE NUMBER: 2017CR2086
THE PEOPLE OF THE STATE OF COLORADO, v. DONALD JAMES MYERS, Defendant.	COURT USE ONLY
Attorney or Party Without Attorney Name: Address: Phone Number: FAX Number: Atty. Reg. #	Case Number: 17 CR 2086 Division: 10 Courtroom: Flynn
ORDER SETTING BOND AT \$100,000 CASH ONLY	

Having considered the parties' positions with respect to the setting of bond, I now find and order as follows:

1. Article II, section 19 of the Colorado Constitution gives the criminally accused the right to a bail bond, pending adjudication of the charges against him: "All persons shall be bailable by sufficient sureties pending disposition of charges."
2. The Eighth Amendment protects the specific right to non-excessive pre-trial bail.
3. On May 11, 2013 Governor Hickenlooper signed into law H.B. 13-1236 (C.R.S. 16-4-103), which substantially alters the way bail is administered by judges in Colorado pursuant to the guidelines established by the Colorado Commission on Criminal and Juvenile

Justice. Pursuant to C.R.S. 16-4-103, judges **must presume** that all persons are eligible for release, except for parolees who are arrested for injuring another person or who are in possession of a deadly weapon, and **must use** an empirically developed risk assessment instrument that classifies a person based upon predicted levels of risk of pretrial failure. Furthermore, judges **must consider** a person's financial condition and consider all methods of bond and conditions of release to avoid unnecessary pretrial incarceration. Furthermore, the type of bond and conditions of release shall be sufficient to reasonably ensure the appearance of the person as required and to **protect the safety of any person or the community**, taking into consideration the individual characteristics of each person in custody, including the person's financial condition.

4. Mesa County's bail system is data driven and there is no bail schedule that sets bail based on the offense alleged. See Administrative Order 15-01 (Mesa County's Bond Guidelines is based on the results of several years of collaboration between various stakeholders in the 21st Judicial District, including judges, prosecutors, defense counsel, the Sheriff, and personnel from the Mesa County Criminal Justice Services Department).
5. Mesa County also enjoys the benefit of a well-respected pretrial services program that in a great majority of cases provides a viable alternative to the pretrial incarceration of individuals.
6. Per Administrative Order 15-01, if pretrial release is found to be appropriate and a defendant's pretrial risk can be addressed with non-monetary conditions of bond, then a monetary condition of bond should not result in the continued pretrial detention of a defendant.
7. Per the Pretrial Services Report filed on November 1, 2017, Defendant has a CPAT risk score consistent with defendants whose average public safety rate is only 69% and whose average court appearance rate is only 77%.
8. Per Administrative Order 15-01, which is based upon individualized, evidence-based assessments that use objective verifiable release

criteria (CPAT), a cash only bond with pretrial supervision is the only recommended type of bond in this case.

9. In *United States v. Salerno*, 481 U.S. 739 (1987), the Supreme Court explained: ““The only arguable substantive limitation of the Bail Clause is that the Government’s proposed conditions of release or detention not be “excessive” in light of the perceived evil. Of course, to determine whether the Government’s response is excessive, we must compare that response against the interest the Government seeks to protect by means of that response. Thus, when the Government has admitted that its only interest is in preventing flight, bail must be set by a court at a sum designed to ensure that goal, and no more.”” Importantly, however, the *Salerno* Court approved as constitutional pretrial bond decisions that result in the pretrial detention of a defendant and did not proscribe the setting of an unaffordable bond for defendants who are accused of a violent crime and who are also found to pose a danger to the community.
10. Persons on bail for a violent crime are 12,000% more likely than a randomly selected adult citizen to be charged with homicide. *Deadly Dilemmas III: Some Kind Words for Preventative Detention*, Northwestern University School of Law, Public Law and Legal Theory Series, No. 11-24, Page 17.
11. Of significant importance to the Court is that the allegations in this case are very violent in nature. According to the information in the affidavit that was filed in support of Defendant’s arrest, Defendant went to the alleged victim’s residence, allegedly unlawfully entered and remained in the alleged victim’s residence, and that Defendant allegedly assaulted the alleged victim in different areas of her house, including that he allegedly “slammed her down on the ground” and “used both hands and choked her around her neck with enough pressure to prevent her from being able to breath” causing injury to the alleged victim.
12. Of significant importance to the Court is that Defendant has two prior felony convictions as well as a prior misdemeanor conviction for possession of an illegal weapon and that, if convicted, Defendant would not be eligible for a sentence to probation.

13. Defendant is represented by court appointed counsel and is therefore considered to be indigent and the Court is aware that a significant monetary bond will likely result in Defendant's continued incarceration.
14. The Court has considered all methods of bond and conditions of release to avoid unnecessary pretrial incarceration, including the use of a protection order, pretrial supervision, and GPS monitoring and has also considered the factors that were argued by defense counsel.
15. Given the violent nature of the charged offenses and the defendant's individual characteristics described above, the Court finds that there are no conditions of release available that would adequately protect the community. Furthermore, no amount of money, if posted, would serve any purpose in protecting the community.
16. No amount of monetary bond, if allowed to be posted, would serve to adequately protect the community and therefore a \$100,000 cash only bond is found to not be excessive.
17. In light of the Court's findings, it is appropriate under Colorado law and also constitutional for the Court to set bond in an amount that Defendant is unable to afford. Therefore, bond is ordered set at \$100,000 cash only.

SO ORDERED this 10th day of November, 2017.

BY THE COURT:

Brian J. Flynn
District Court Judge 